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20 *Attorneys for Plaintiff Carr Clifton*

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA

23 CARR CLIFTON,

24 Plaintiff,

25 v.

26 MACMILLAN PUBLISHERS LTD.,

27 Defendant.

28 ) **CV 13 2291**

) Case No.

) COMPLAINT

) DEMAND FOR JURY TRIAL

29 Plaintiff Carr Clifton ("Clifton") for his Complaint against Defendant Macmillan Publishers  
30 Ltd. ("Macmillan") alleges:

31 COMPLAINT

## **STATEMENT OF ACTION**

1. This is an action for copyright infringement brought by Plaintiff Carr Clifton, the holder of all copyrights to the photographs described hereafter and originally licensed for limited use by Macmillan, against Defendant for uses of Plaintiff's photographs without his authority or permission.

## PARTIES

2. Carr Clifton is a professional photographer engaged in licensing photographic images to publishers, including Macmillan. He is a United States citizen and a resident of Taylorsville, California.

3. Macmillan is a privately held international publishing company owned by Georg von Holtzbrinck Publishing Group. Macmillan has offices worldwide, including in New York. Macmillan sells and distributes textbooks via its employees and agents in California and throughout the United States, including the publications in suit and ancillary materials, in which Plaintiff's photographs are unlawfully reproduced.

## JURISDICTION

5. This is an action for injunctive relief, statutory damages, monetary damages, and interest under the copyright laws of the United States. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338 (copyright).

## **VENUE**

6.      Venue is appropriate in this District pursuant to 28 U.S.C. §§ 1391(a) and (b) and 28 U.S.C. §§ 1400(a).

## **FACTS COMMON TO ALL COUNTS**

7. Clifton is the owner of copyrights in the attached photographic images ("Photographs") depicted in Exhibit 1, whose registration status with the United States Copyright Office is set forth in that exhibit

8. Between 1997 and 2010, in response to permission requests from Macmillan, Clifton sold Macmillan limited licenses to use copies of the Photographs in certain educational

1 publications. The licenses Clifton granted Macmillan were expressly limited by number of copies,  
2 distribution area, language, duration and/or media as set forth in Exhibit 1.

3 9. On information and belief, at the time Macmillan represented to Clifton in its  
4 requests that it needed specified, limited licenses to use the Photographs, Macmillan knew its  
5 actual uses under the licenses would exceed the permission it was requesting.

6 10. Upon information and belief, Macmillan exceeded the permitted uses under the  
7 terms of the limited licenses granted by Clifton in the publications identified in Exhibit 1 and  
8 related ancillary publications, including, but not limited to, custom editions, pupil editions, teacher  
9 editions, and study guides, as well as digital, electronic and online editions, e-books, CDs, DVDs,  
10 CD-ROMs, flash drives, screen shots, laser disks, audiotapes, videotapes, Power Point  
11 presentations, uses on Internet websites, advertising and sales materials, samples, pilots, facsimiles,  
12 and other associated publications and products.

13 11. Upon information and belief, Macmillan used the Photographs without any  
14 permission in additional publications and related ancillary publications. Because Macmillan alone  
15 knows these wholly unauthorized uses, Clifton cannot further identify them without discovery.

16 12. Macmillan alone knows the full extent to which it has infringed Clifton's copyrights  
17 by violating his license limits.

18 13. Prior to filing this lawsuit, Macmillan admitted using the Photographs without  
19 authorization and requested "retroactive" licenses to excuse its copyright infringements. Clifton  
20 requested that Macmillan provide specific information regarding Macmillan's unauthorized uses of  
21 the Photographs. Macmillan did not provide the requested information.

22 14. All exhibits attached hereto are incorporated into this Complaint by this reference.

23 **COUNT I**

24 **COPYRIGHT INFRINGEMENT AGAINST MACMILLAN**

25 15. Plaintiff incorporates herein by this reference each and every allegation contained in  
26 the paragraphs set forth above.

16. The foregoing acts of Macmillan constitute infringements of Plaintiff's copyrights in the Photographs in violation of 17 U.S.C. §§ 501 et seq.

17. Plaintiff suffered damages as a result of Macmillan's unauthorized use of the Photographs.

**WHEREFORE**, Plaintiff requests the following:

1. A preliminary and permanent injunction against Defendant and anyone working in concert with Defendant from copying, displaying, distributing, selling or offering to sell Plaintiff's Photographs described in this Complaint and Plaintiff's photographs not included in suit.

2. As permitted under 17 U.S.C. § 503, impoundment of all copies of Plaintiff's Photographs used in violation of Plaintiff's exclusive copyrights as well as all related records and documents and, at final judgment, destruction or other reasonable disposition of the unlawfully used Photographs, including digital files and any other means by which they could be used again by Defendant without Plaintiff's authorization.

3. An award of Plaintiff's actual damages and all profits derived from the unauthorized use of Plaintiff's Photographs or, where applicable and at Plaintiff's election, statutory damages.

**4. An award of Plaintiff's reasonable attorneys' fees.**

5. An award of Plaintiff's court costs, expert witness fees, interest and all other amounts authorized under law.

6. Such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all issues permitted by law.

DATED: May 17, 2013

**Plaintiff Carr Clifton, by his attorneys,**

s/ Heather R. Norton

**Heather R. Norton (SBN 257014)**

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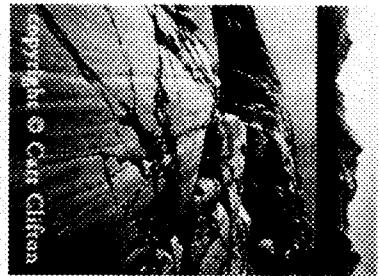
# EXHIBIT 1

Claim	Image	Description	Image ID	Invoice	Invoice Date	Publication	License Limits	Registration Certificate #	Date of Registration
1		Carr Clifton/Shawangunk Mountains, NY	88-2-NY-C	Invoice No. 10649	Oct. 1, 1997	Understanding Earth, 2nd., 1988, by Press & Siever.	40,000; 1/32; NA; Eng.; CD-ROM	Service Request # 1- 91664751	Application Date: April 5, 2013
2		Carr Clifton/Jasper National Park, Alberta, CA	92-12-AB-F	Invoice No. 10649	Oct. 1, 1997	Understanding Earth, 2nd., 1988, by Press & Siever.	40,000; 1/4 p.; NA; Eng.; CD-ROM	Vau 338-153	23 Dec-95
3		Carr Clifton/Glacier Bay National Park, AK	93-55-AK-3	Invoice No. 10649	Oct. 1, 1997	Understanding Earth, 2nd., 1988, by Press & Siever.	40,000; 1/4 p.; NA; Eng.	Vau 338-165	18 Dec-95

4		Carr Clifton/Glacier Bay National Park, AK	Invoice No. 93-SS-AR-3 10681	Environmental Geology, 1988, by Merritts, Jewett, and Menking 40,000; 1/4p; Eng.; U.S. VAU 338-165 18-Dec-95
5		Carr Clifton/Jasper National Park, Alberta, CA	Invoice No. 92-12-AB-F 11106	Understanding Earth, 3rd., Apr. 17, 2001, by Press & Siever. 40,000; 1/4p; Eng.; NA VAU 338-163 29-Dec-95
6		Carr Clifton/Shawangunk Mountains, NY	Invoice No. 88-2-NY-C 11106	Understanding Earth, 3rd., Apr. 17, 2001, by Press & Siever. 40,000; 1/2p; Eng.; NA Service Request # 1- 91664751 Application Date: April 5, 2013

7		Carr Cliffs/Glacier Bay National Park, AK 93-SS-AR-3	Invoice No. 11106	Apr. 17, 2001 Understanding Earth, 3rd., 2001, by Press & Siever 40,000; iAp.; Eng.; NA VAU 338-135 18-Dec-95
8		Carr Cliffs/Glacier Bay National Park, AK 93-SS-AR-2	Invoice No. 11123	Jul. 16, 2001 Earth's Climate: Past & Future, 2nd., by Ruddiman 16,000; 3/4p.; Eng.; NA VAU 338-135 18-Dec-95
9		Carr Cliffs/Shawangunk Mountains, NY 88-2-NYC	Invoice No. 11135	Aug. 11, 2003 Understanding Earth, 4ed., 2003, by Press & Siever 30,000; 1,180.; Eng.; Word Service Request # 1: 916647751 Application Date: April 5, 2013

10		<b>Carr Clifton/Glacier</b> Bay National Park, AK 93.55.AK.3	Barcode No. 111305	Aug. 11, 2003	Understanding Earth, 4ed., 2003, by Press & Seiver, World 12,000; 1/4p, Eng.	VAU 338.165 18 Dec-95
11		<b>Carr Clifton/Shawangunk Mountains, NY</b> SS-2-NY-C 111368	Barcode No. 111368	June 14, 2003 electronic edition	Understanding Earth, 4ed., 2003, by Press & Seiver, electronic edition 3 years; 1/8p.	Service Request # 1- 1916647751 Application Date: April 5, 2013
12		<b>Carr Clifton/Glacier</b> Bay National Park, AK 93.55.AK.3	Barcode No. 111368	June 14, 2004	Understanding Earth, 4ed., 2003, by Press & Seiver, electronic edition 3 years; 1/4p.	VAU 338.165 18 Dec-95

13	 <b>Carr Clifton/Glacier</b> Bay National Park, AK 93.SS.AK.3	Carr Clifton/Glacier Bay National Park, AK 93.SS.AK.3	Carr Clifton/Glacier Bay National Park, AK 93.SS.AK.3	Carr Clifton/Glacier Bay National Park, AK 93.SS.AK.3